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San Francisco, California 94105
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)
J.H. Baxter & Company, Roseburg)
Forest Products Co., International)
Paper, and Beazer East Inc., on)
behalf of the American Lumber &)
Treating Company Interests)
)

Respondents.)
)
)

Proceeding Under Section 122(h)(1))
of the Comprehensive Environmental)
Response, Compensation and Liability)
Act of 1980 (42 U.S.C. §9622(h)(1)))
as amended by the Superfund)
Amendments and Reauthorization)
Act of 1986)

ADMINISTRATIVE CONSENT
ORDER

Docket No. 93-25

1 This Order is issued by the United States Environmental
2 Protection Agency ("EPA") and is agreed to by the Respondents
3 captioned above. The purpose of this Order is for EPA to recover
4 response costs incurred by the United States at or in connection
5 with the J.H. Baxter Superfund Site in Weed, California and to
6 resolve the liability of the Respondents for such response costs.

7 EPA is authorized to enter into this Order pursuant to the
8 authority vested in the Administrator of the EPA by Section
9 122(h)(1) of the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980, as amended by the
11 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.
12 99-499 ("CERCLA"), which authority has been delegated to the
13 Regional Administrators of the EPA by EPA Delegation No. 14-14-D
14 (Sept. 13, 1987), and redelegated to the Director, Hazardous
15 Waste Management Division, EPA Region IX.

16 WHEREAS, EPA alleges that hazardous substances as defined by
17 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at
18 the Site and that such hazardous substances have been or are
19 threatened to be released into the environment from the Site;

20 WHEREAS, EPA alleges that the Site is a "facility" as
21 defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

22 WHEREAS, EPA alleges that such releases or threatened
23 releases required response action to be undertaken at the Site
24 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will
25 require further response action to be undertaken in the future;

26 WHEREAS, EPA alleges that in performing this response
27 action, it has incurred response costs at or in connection with
28 the Site totalling \$2,790,497.00 as of October 31, 1992;

1 WHEREAS, EPA alleges that as of June 15, 1993 it was
2 entitled to interest in the amount of \$176,402.00 on response
3 costs incurred prior to October 31, 1992;

4 WHEREAS, Respondents have previously submitted payment of
5 \$420,000 in partial satisfaction of EPA's claims for response
6 costs;

7 WHEREAS, EPA alleges that the Respondents are responsible
8 parties pursuant to Section 107(a) of CERCLA, 42 U.S.C.
9 § 9607(a), and are jointly and severally liable for response
10 costs incurred and to be incurred at or in connection with the
11 Site;

12 WHEREAS, for purposes of this Order Respondents do not admit
13 any of the allegations set forth above;

14 WHEREAS, EPA represents that the Attorney General or her
15 designee has issued prior written approval of the settlement
16 embodied in this Order pursuant to Section 122(h)(1) of CERCLA,
17 42 U.S.C. § 9622(h)(1); and

18 WHEREAS, EPA and the Respondents desire to settle certain
19 claims arising from the Respondents' alleged involvement with the
20 Site without litigation and without the admission or adjudication
21 of any issue of fact or law;

22 NOW, THEREFORE, in consideration of the promises herein, and
23 intending to be legally bound hereby, it is ordered and agreed as
24 follows:

25 1. DEFINITIONS: Unless otherwise expressly provided
26 herein, terms used in this Consent Order which are defined in
27 CERCLA or in regulations promulgated under CERCLA shall have the
28 meaning assigned to them in CERCLA or in such regulations.

1 Whenever terms listed below are used in this Consent Order the
2 following definitions shall apply:

3 a. "ALTC Interests" shall mean, soley for the purposes of
4 this Order, the American Lumber & Treating Company, Beazer
5 East, Inc., Aluminum Company of America (ALCOA), Chicago
6 Bridge & Iron, Co., whichever person(s) or entity(ies)
7 is(are) judicially determined to liable for said Interests.

8 b. "CERCLA" shall mean the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980, as
10 amended, 42 U.S.C. §§ 9601 et seq.

11 c. "Day" shall mean a calendar day. In computing any
12 period of time under this Consent Order where the last day
13 would fall on a Saturday, Sunday, or Federal Holiday, the
14 period shall run until the close of business of the next
15 working day.

16 d. "EPA" shall mean the United States Environmental
17 Protection Agency and any successor departments or agencies
18 of the United States.

19 e. "Parties" shall mean the United States and each and
20 every Respondent.

21 f. "Past Response Costs" shall mean all costs, including
22 but not limited to direct and indirect costs, that EPA, the
23 U.S. Department of Justice or any agency or entity on behalf
24 of EPA has incurred in connection with the Site through
25 October, 31, 1992.

26 g. "Respondents" shall mean J.H. Baxter & Co., International
27 Paper, Roseburg Forest Products Co., and Beazer East, Inc.
28 on behalf of the ALTC Interests.

1 g. "Section" shall mean a portion of this Consent Order
2 identified by an arabic numeral and/or a lower case letter.

3 h. "Site" or "the J.H. Baxter Superfund Site" shall mean
4 the J.H. Baxter property located at 422 Mill Street,
5 portions of the Roseburg Forest Products property, located
6 at 98 Mill Street, Weed, California, and the areal extent of
7 contamination.

8 i. "United States" shall mean the EPA and the U.S.
9 Department of Justice (DOJ), and any other United States
10 department, or agency or instrumentality acting on behalf of
11 the EPA with respect to the Site.

12 2. This Order shall be binding upon EPA and shall be
13 binding upon the Respondents and their successors and assigns.
14 Each signatory to this Order represents that he or she is fully
15 authorized to enter into the terms and conditions of this Order
16 and to bind legally the party represented by him or her. The
17 Respondents agree to undertake all actions required by this
18 Order. The Respondents consent to the issuance of this Order and
19 will not contest EPA's authority to enter into this Order or to
20 implement or enforce its terms, subject to any defenses available
21 to Respondents under this Order.

22 3. The Respondents agree to pay to the Hazardous Substance
23 Superfund \$2,324,381.10, according to the schedule set forth in
24 Appendix A of this Order. The Respondents agree to pay interest
25 on all amounts outstanding after the date of the First Payment
26 set forth in Appendix A. Interest shall be calculated at the
27 rate specified for interest on investments of the Hazardous
28 Substance Superfund established under subchapter A of chapter 98

1 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. §
2 9607(a). Upon request by Respondent, EPA will timely provide a
3 calculation of interest being charged, and the interest rate
4 being used for such calculation, for any time period covered by
5 Appendix A of this Order.

6 4. The Respondents' payments shall be made by certified or
7 cashier's check made payable to "EPA-Hazardous Substance
8 Superfund." The checks shall reference the name and address of
9 the Respondents, the site name and identification number, and the
10 EPA docket number for this action and shall be sent by the
11 Respondents to:

12 EPA Region IX
13 ATTN: Superfund Accounting
14 P.O. Box 360863M
Pittsburgh, PA 15251

15 5. The Respondents shall simultaneously send a copy of the
16 checks to:

17 Kathy Setian
18 Mail Code H-6-3
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

19 6. In addition to any other remedies or sanctions available
20 to EPA, any Respondent who fails or refuses to comply with any
21 term or condition of this Order shall be subject to enforcement
22 action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C.
23 § 9622(h)(3), and to civil penalties pursuant to Sections 122(1)
24 and 109 of CERCLA, 42 U.S.C. §§ 9622(1) and 9609.

25 7. Subject to Section 8 of this Order, upon full payment of
26 the amount specified in Section 3 of this Order, EPA agrees that
27 the Respondents shall have resolved any and all civil liability
28 to EPA under Section 107(a) of CERCLA, 42 U.S.C. section 9607(a),

1 for reimbursement of EPA Past Response Costs.

2 8. Nothing in this Order is intended to be nor shall it be
3 construed as a release, covenant not to sue, or compromise of any
4 claim or cause of action, administrative or judicial, civil or
5 criminal, past or future, in law or in equity, which EPA may have
6 against the Respondents for:

- 7 a) any liability as a result of failure to make the
8 payments required by Section 3 and Appendix A of this
9 Order or other failure to comply with terms of this
10 Order; or
11 b) any liability not expressly included in Section 7
12 above, including, without limitation any liability for
13 i) injunctive relief at the Site; ii) response costs
14 other than those specifically described under Sections
15 3 and 7 above; iii) damages for injury to or loss or
16 destruction of natural resources; or iv) criminal
17 liability.

- 18 9. Nothing in this Order and attached payment schedule
19 (Appendix A) constitutes or shall be interpreted or construed as
20 a) an admission by Respondents that EPA is entitled to
21 any of the remedies set forth in the preceding Section;
22 or
23 b) an admission by any Respondent of any liability
24 under any federal, state, or local law, or of any
25 understanding or agreement among Respondents as to
26 their potential joint liability, their potential
27 liability or their proportionate share of any potential
28 liability with respect to the Site.

1 10. Nothing in this Order is intended to be nor shall it be
2 construed as a release, covenant not to sue, or compromise of any
3 claim or cause of action, administrative or judicial, civil or
4 criminal, past or future, in law or in equity, which EPA or
5 Respondents may have against any person, firm, corporation or
6 other entity not a signatory to this Order.

7 11. The Respondents agree not to assert any claims or
8 causes of action against the United States or the Hazardous
9 Substance Superfund arising out of response activities undertaken
10 at, or relating to, the Site prior to October 31, 1992, or to
11 seek any other costs, damages, or attorney's fees from the United
12 States, its agencies, employees or contractors arising out of
13 response activities undertaken at, or relating to, the Site prior
14 to October 31, 1992.

15 12. With regard to claims for contribution against the
16 Respondents for matters addressed in this Order, the parties
17 hereto agree that the Respondents are entitled, as of the
18 effective date of this Order, to such protection from
19 contribution actions or claims as is provided in Section
20 122(h)(4) of CERCLA, provided that the foregoing shall not apply
21 to claims between Beazer East, Inc., ALCOA and Chicago Bridge &
22 Iron, Co.

23 13. This Order shall be subject to a thirty-day public
24 comment period pursuant to Section 122(i) of CERCLA. In
25 accordance with Section 122(i)(3) of CERCLA, EPA may withdraw its
26 consent to this Order if comments received disclose facts or
27 considerations which indicate that this Order is inappropriate,
28 improper or inadequate, in which case EPA shall timely notify

1 Respondents. Upon receipt of such notification of EPA's
2 withdrawal of its consent, Respondents shall be released from all
3 obligations required under this Order.

4 14. The effective date of this Order shall be the date upon
5 which EPA issues written notice to the Respondents that the
6 public comment period pursuant to Section 13 of this Order has
7 closed and that comments received, if any, do not require EPA
8 withdrawal from this Order.

9 15. This Consent Order may be executed and delivered in any
10 number of counterparts, each of which when executed and delivered
11 shall be deemed to be an original, but such counterparts shall
12 together constitute one and the same document.

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1 IT IS SO AGREED:
2 J.H. Baxter & Co.,
3
4 By: _____
5 Its: _____ Date _____
6
7 International Paper, Inc.
8
9 By: _____
10 Its: _____ Date _____
11
12 Roseburg Forest Products, Co.
13
14 By: _____
15 Its: _____ Date _____
16
17 Beazer East, Inc. on behalf of
18 the ALTC Interests
19 By: _____
20 Its: _____ Date _____
21 The above being agreed and consented to, IT IS SO ORDERED
22 this 30th day of September, 1993.
23
24 U.S. Environmental Protection Agency
25 By: Jeff Zelikson
26 Jeff Zelikson, Director
27 Hazardous Waste Management Division
28 Region IX

APPENDIX A

	AMOUNT		DATE DUE
FIRST PAYMENT:	\$1,378,607.41		Within 30 Days of Effective Date of this Order
SECOND PAYMENT:	171,057.47	*	April 1, 1994
THIRD PAYMENT:	155,036.22	*	October 1, 1994
FOURTH PAYMENT:	154,803.78	*	April 1, 1995
FIFTH PAYMENT:	155,036.22	*	October 1, 1995
SIXTH PAYMENT:	155,036.22	*	April 1, 1996
SEVENTH PAYMENT:	154,803.78	*	August 1, 1996

* Plus Interest as set forth in Section 3 of this Order.

1 IT IS SO AGREED:

2 J.H. Baxter & Co.,

3

4 By: _____

5 Its: _____ Date _____

6

7 International Paper, Inc.

8

9 By: _____

10 Its: _____ Date _____

11

12 Roseburg Forest Products, Co.

13

14 By: _____

15 Its: _____ Date _____

16

17 Beazer East, Inc. on behalf of
the ALTC Interests

18

19 By:  _____

20 Its: Richard A. Graham _____ Date _____

21 Vice President and
Chief Financial Officer

22 The above being agreed and consented to, IT IS SO ORDERED

23 this _____ day of _____, 1992.

24

25 U.S. Environmental Protection Agency

26 By: _____

27 Jeff Zelikson, Director
Hazardous Waste Management Division
Region IX

28

1 IT IS SO AGREED:

2 J.H. Baxter & Co.,

3
4 By: William T. Hassler

5 Its: William T. Hassler

Attorney

October 15, 1993
Date

6
7 International Paper, Inc.

8
9 By: _____

10 Its: _____

Date

11
12 Roseburg Forest Products, Co.

13
14 By: _____

15 Its: _____

Date

16
17 Beazer East, Inc. on behalf of
18 the ALTC Interests

19 By: _____

20 Its: _____

Date

21 The above being agreed and consented to, IT IS SO ORDERED

22 this _____ day of _____, 1992.

23
24 U.S. Environmental Protection Agency

25 By: _____

26 Jeff Zelikson, Director
27 Hazardous Waste Management Division
28 Region IX

IT IS SO ORDERED:

J.H. Baxter & Co.,

BY: _____

Date _____

For: _____

International Paper, Inc.

BY: John A. Hether

10/23/93

For: _____

General Manager

Date _____

Roseburg Forest Products, Co.

BY: _____

Date _____

For: _____

Baxter East, Inc. on behalf of
the AISC Interests

BY: _____

Date _____

For: _____

The above being agreed and consented to, IT IS SO ORDERED

this _____ day of _____, 1993.

U.S. Environmental Protection Agency

BY: _____

Jeff Zelnickson, Director
Hazardous Waste Management Division
Region IX

J.H. Baxter Final ACO Part Response Costs

1 IT IS SO AGREED:
2 J.H. Baxter & Co.,
3
4 By: _____
5 Its: _____ Date _____
6
7 International Paper, Inc.
8
9 By: _____
10 Its: _____ Date _____
11
12 Roseburg Forest Products, Co.
13
14 By: Allyn C. Carl 9/29/93
15 Its: V. President Date _____
16
17 Beazer East, Inc. on behalf of
18 the ALTC Interests
19 By: _____
20 Its: _____ Date _____
21 The above being agreed and consented to, IT IS SO ORDERED
22 this _____ day of _____, 1992.
23
24 U.S. Environmental Protection Agency
25 By: _____
26 Jeff Zelikson, Director
27 Hazardous Waste Management Division
28 Region IX